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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES ALEXANDER BOYD,

Defendant and Appellant.

E069343

(Super.Ct.No. RIF10002905)

OPINION

APPEAL from the Superior Court of Riverside County. David A. Gunn, Judge.

Affirmed as modified.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Michael Pulos and Joy Utomi, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Charles Alexander Boyd of inflicting corporal injury on a spouse (Pen. Code<sup>1</sup>, § 273.5, subd. (a), count 1), assault by means of force likely to produce great bodily injury (former § 245, subd. (a)(1), count 2), false imprisonment (§ 236, count 3), criminal threats (§ 422, count 4), and grand theft (§ 487, count 5). As to counts 1, 2, and 3, the jury also found true the allegation that defendant personally inflicted great bodily injury under circumstances involving domestic violence. (§§ 12022.7, subd. (e), 1192.7, subd. (c)(8).) A trial court sentenced him to an aggregate term of eight years four months in state prison. At that time, the court stayed the sentences for assault (count 2) and false imprisonment (count 3), pursuant to section 654. Defendant subsequently filed a petition for resentencing under Proposition 47, the Safe Neighborhood and Schools Act (§ 1170.18). The trial court granted the petition and reduced defendant's grand theft conviction to a misdemeanor. The court resentenced him and kept the aggregate term at eight years four months. In doing so, it did not stay the terms on counts 2 and 3 under section 654 but imposed three years on count 2 and eight months on count 3.

On appeal, defendant challenges the court's decision to impose terms on the two counts previously stayed under section 654. The People concede, and we agree, that the court should have stayed the sentence on count 2 under section 654. In all other respects, we affirm the judgment.

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<sup>1</sup> All further statutory references are to the Penal Code, unless otherwise noted.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>

The victim dated defendant for approximately three years. On June 3, 2010, the victim told defendant she was seeing someone else and did not want to continue a relationship with him. Defendant became extremely upset and began yelling. The victim grabbed her purse and tried to leave the house. Defendant grabbed her by her hair, stated he was going to kill her, and punched her in the face. He also grabbed the victim by her neck, slammed her against the wall, and choked her until she became unconscious. When the victim reached for her cellular phone, defendant took it, turned it off, and threw it, preventing her from calling for help. He then continued to punch the victim and choke her. The victim eventually escaped defendant's attack, exited the house, and began running until she encountered a mailman. She asked him to call 911.

On August 26, 2013, the jury found defendant guilty of spousal abuse (§ 273.5, subd. (a), count 1), assault by means of force likely to produce great bodily injury (former § 245, subd. (a)(1), count 2), false imprisonment (§ 236, count 3), criminal threats (§ 422, count 4), and grand theft (§ 487, count 5). The jury also found true the allegation as to counts 1, 2, and 3 that he personally inflicted great bodily injury under circumstances involving domestic violence. (§§ 12022.7, subd. (e), 1192.7, subd. (c)(8).)

On February 3, 2014, the trial court sentenced defendant to eight years four months in state prison as follows: the middle term of three years on count 1, plus four

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<sup>2</sup> Pursuant to defendant's request, we have taken judicial notice of the record in the previous appeal. (*People v. Boyd* (Nov. 24, 2015, E060560) [nonpub. opn.]; Evid. Code, § 452, subd. (d).) The factual and procedural background are taken from our unpublished opinion and the record in that appeal.

years consecutive for the great bodily injury enhancement, and eight months consecutive on both counts 4 and 5. On counts 2 and 3, the court imposed three years and two years, respectively, but stayed the terms pursuant to section 654. The court also imposed four-year sentences for the great bodily injury enhancements on counts 2 and 3 but stayed them pursuant to section 654.

Defendant appealed, and in an opinion filed November 24, 2015, this court affirmed the judgment. (*People v. Boyd, supra*, E060560.)

Defendant also filed a petition pursuant to Proposition 47 to reduce his grand theft conviction to a misdemeanor. The People opposed the petition on the ground that defendant was a danger to society. The court held a hearing on September 14, 2017, and defense counsel asked the court to reduce the conviction, which would lessen defendant's sentence by eight months. The prosecutor reminded the court that the facts of the case remained just as egregious as they were on the date of the incident, when the jury convicted him, and when the prior court sentenced him to eight years four months. She asserted that the facts had not changed simply because count 5 was now a misdemeanor; thus, his total sentence should remain the same. The prosecutor then argued that defendant's conduct with regard to his false imprisonment conviction (count 3) was different than his conduct supporting his conviction for committing corporal injury to a spouse (count 1); thus, the sentence as to count 3 should not be stayed under section 654. The court recognized that count 1 and count 3 were different charges with different elements, but stated that it depended on the factual circumstances, which it wanted to review more fully. The court set another hearing.

On October 5, 2017, the trial court reduced the grand theft conviction in count 5 to a misdemeanor and imposed a 180-day jail term, with credit for 180 days of time served. The court maintained the aggregate sentence at eight years four months by resentencing defendant as follows: on count 1, it sentenced defendant to the upper term of four years, plus three years on the great bodily injury enhancement; on count 2, it imposed three years concurrent; and, on counts 3 and 4, it sentenced him to eight months each, consecutive.<sup>3</sup>

### ANALYSIS

#### The Court Properly Restructured Defendant's Aggregate Sentence and Imposed the Sentence on Count 3

Defendant argues that the resentencing court unlawfully changed the sentences on counts 2 and 3. He contends that the court violated the principles of res judicata and collateral estoppel when it reconsidered the decision made by the original sentencing court that section 654 applied to counts 2 and 3. Defendant further argues that the granting of the Proposition 47 petition on count 5 did not authorize the court to resentence him on counts 2 and 3, as well. He finally claims that the court erred in failing

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<sup>3</sup> The minute order from the October 5, 2017 hearing reflects that the court granted defendant's Proposition 47 petition to reduce count 5 to a misdemeanor and sentenced him to 180 days in county jail on that count, with credit for time served. However, we note the reporter's transcript from that hearing does not reflect such. Rather, it reflects that the court resentenced defendant on counts 1 through 4. We further note the reporter's transcript from the prior hearing on September 28, 2017, reflects that the parties and the court were in agreement that count 5 was now a misdemeanor. On appeal, neither party has raised an issue as to the noted discrepancies, and the parties do not dispute that the court reduced count 5 to a misdemeanor and sentenced defendant to 180 days in county jail, with credit for time served on that count.

to stay the sentences on counts 2 and 3 under section 654, since the description of the facts in this court’s prior opinion demonstrate that the convictions for corporal injury to a spouse, assault, and false imprisonment all “involved the same act . . . and a common criminal objective and intent.” The People contend the resentencing court had jurisdiction to reconsider and restructure defendant’s entire sentence, including whether section 654 applied to counts 2 and 3. The People concede that the court should have stayed the sentence on the assault conviction in count 2, but argue that the court properly imposed the sentence for false imprisonment in count 3. We agree with the People.

*A. Res Judicata and Collateral Estoppel Are Inapplicable*

Defendant’s argument that the doctrines of res judicata and collateral estoppel prohibited the resentencing court from imposing sentences on the two previously-stayed terms in counts 2 and 3 is meritless. In civil cases, res judicata precludes a party from relitigating a cause of action that has been finally determined by a court. (*In re Crow* (1971) 4 Cal.3d 613, 622 (*Crow*).) “In criminal cases in which an individual has once been haled before a jury and found innocent, res judicata, including collateral estoppel . . . prevents a *second prosecution for the same conduct* or subject matter.” (*Id.* at p. 623, italics added.) Here, defendant contends that the court did not have the authority to resentence him on counts 2 and 3, not that there was a second prosecution for the same conduct. Thus, the doctrines of res judicata and collateral estoppel are not relevant to his claim.

*B. The Court Was Entitled to Resentence Defendant*

Defendant contends that the court's resentencing of count 5 under section 1170.18 did not authorize it to also reconsider his sentences on counts 2 and 3. He is mistaken. "When Proposition 47 applies to any count or related case, the trial court must reconsider the entirety of the aggregate sentence." (*People v. Mendoza* (2016) 5 Cal.App.5th 535, 538.) "The reason courts are entitled to revisit sentencing decisions beyond merely selecting a new principal term in accordance with section 1170.1, subdivision (a), is that the aggregate length of a term matters." (*People v. Cortez* (2016) 3 Cal.App.5th 308, 316 (*Cortez*).)

In *Cortez, supra*, 3 Cal.App.5th 308, the defendant was originally sentenced on a felony conviction and two misdemeanors. He later filed a Proposition 47 petition requesting the court to resentence his felony conviction as a misdemeanor. The court granted the petition and resented him on all three counts. (*Id.* at pp. 310-311.) On appeal, the defendant contended, pursuant to section 1170.18, subdivision (b), that in the context of an aggregate sentence, the court was "only authorized to alter the portion of the aggregate sentence attributable to the felony subject to Proposition 47." (*Id.* at p. 314.) The court held that a resentencing under Proposition 47 "encompasses *the entire sentence*, not merely the portion attributed to the qualifying felony." (*Id.* at p. 316, italics added.) The court went on to state that "the court is entitled to revisit sentencing decisions that have nothing to do with section 1170.1, subdivision (a). The court may, for example, impose an upper-term punishment when the middle term had previously been imposed. [Citation.] *A court may also impose a previously stayed sentence.*

[Citation.]” (*Ibid.*, italics added.) In the instant case, the court resentenced defendant on count 5, pursuant to section 1170.18. At that time, it was entitled to reconsider his entire sentence. (See *Ibid.*)

Moreover, the original sentencing court erred in staying the sentence on count 3 pursuant to section 654. (See § C., *post.*) “[A] sentence is generally ‘unauthorized’ where it could not lawfully be imposed under any circumstance in the particular case.” (*People v. Scott* (1994) 9 Cal.4th 331, 354 (*Scott*).) “It is well settled . . . that the court acts in ‘excess of its jurisdiction’ and imposes an ‘unauthorized’ sentence when it erroneously stays or fails to stay execution of a sentence under section 654.” (*Id.* at p. 354, fn. 17.) “[A]n unauthorized sentence may be corrected at any time.” (*People v. Turrin* (2009) 176 Cal.App.4th 1200, 1205 (*Turrin*).)

*C. The Court Should Have Stayed the Sentence on Count 2 Under Section 654, But Properly Sentenced Defendant on Count 3*

Defendant asserts that the original sentencing court properly found that the convictions for corporal injury to a spouse (count 1) and felony assault (count 2) were based on the assault of the victim on the morning of June 3, 2010, and that the false imprisonment (count 3) also occurred during the assault. He broadly claims that “[t]he same act was involved for each count,” and, thus, the original sentencing court properly stayed the sentences on counts 2 and 3 pursuant to section 654. The People concede that at resentencing, the court should have stayed the sentence on count 2 under section 654, but argue that it properly imposed the sentence on count 3. We agree with the People.



Under section 654, “[a]n act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.” (§ 654.) “[I]t is well settled that section 654 applies not only where there was but one act in the ordinary sense, but also where there was a course of conduct which violated more than one statute but nevertheless constituted an indivisible transaction. [Citation.] Whether a course of conduct is indivisible depends upon the intent and objective of the actor. [Citation.] If all the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one.” (*People v. Perez* (1979) 23 Cal.3d 545, 551 (*Perez*).) “On the other hand, if the evidence discloses that a defendant entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for the independent violations committed in pursuit of each objective even though the violations were parts of an otherwise indivisible course of conduct.” (*Ibid.*, fn. omitted.)

Here, the evidence showed that defendant became upset when the victim told him she did not want to have a relationship with him any longer. He attacked her by hitting her with his fists, and when the victim got her purse and tried to leave, defendant used physical force to pull her hair to keep her there. The evidence also showed that he grabbed the victim by her neck, slammed her against the wall, and choked her until she became unconscious. (*Boyd, supra*, E060560.) The entire incident supported the corporal injury on a spouse charge in count 1, as well as the assault charge in count 2, since defendant’s apparent objective was to punish and harm her. Thus, the court should

have stayed the sentence on count 2, pursuant to section 654. However, as the court found, the false imprisonment in count 3 was “clearly . . . different than and in addition to the” assaultive conduct committed. While defendant’s objective in counts 1 and 2 was to physically harm the victim, his apparent objective in pulling her hair, slamming her against the wall, and choking her was to prevent her from leaving him. Since he had multiple objectives, the original court erred in staying the sentence on count 3 under section 654. (*Perez, supra*, 23 Cal.3d at p. 551.) Thus, the resentencing court properly corrected the error and imposed the sentence on count 3. (See *Scott, supra*, 9 Cal.4th at p. 354, fn. 17; *Turrin, supra*, 176 Cal.App.4th at p. 1205.)

*D. The Abstract of Judgment Should Be Corrected, if Needed*

We note that the abstract of judgment filed before the resentencing on October 5, 2017, erroneously reflects defendant’s conviction in count 2 as assault with a deadly weapon. He was actually convicted of assault by means of force likely to cause bodily injury. The record on appeal does not appear to contain the abstract of judgment that was presumably filed after the court resentenced defendant. The abstract of judgment should reflect that defendant was convicted of assault by means of force likely to cause bodily injury in count 2.

DISPOSITION

The judgment is modified to stay execution of the sentence imposed on count 2, pursuant to section 654. Furthermore, the abstract of judgment should reflect that defendant was convicted of assault by means of force likely to cause bodily injury in count 2. The superior court is directed to prepare an amended abstract of judgment and

forward it to the Department of Corrections and Rehabilitation. As so modified, the judgment is affirmed.

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McKINSTER  
Acting P. J.

We concur:

MILLER  
J.

RAPHAEL  
J.